

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his )  
capacity as ATTORNEY GENERAL )  
OF THE STATE OF OKLAHOMA and )  
OKLAHOMA SECRETARY OF THE )  
ENVIRONMENT C. MILES TOLBERT, )  
in his capacity as the )  
TRUSTEE FOR NATURAL RESOURCES )  
FOR THE STATE OF OKLAHOMA, )

Plaintiff, )

vs. )

4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al, )

Defendants. )

- - - - -

THE DEPOSITION OF STEVE

BUTLER, produced as a witness on behalf of the  
Plaintiff in the above styled and numbered cause,  
taken on the 26th day of April, 2007, in the City of  
West Siloam Springs, County of Delaware, State of  
Oklahoma, before me, Lisa A. Steinmeyer, a Certified  
Shorthand Reporter, duly certified under and by  
virtue of the laws of the State of Oklahoma.

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1 (Whereupon, the deposition began at  
2 9:05 a.m.)

3 STEVE BUTLER  
4 having first been duly sworn to testify the truth,  
5 the whole truth and nothing but the truth, testified  
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. GARREN:

9 Q Mr. Butler, my name is Richard Garren. I'm  
10 here representing the State of Oklahoma and I have a 09:05AM  
11 few preparatory questions. Have you ever given a  
12 deposition before?

13 A No, sir.

14 Q Okay. It's really pretty simple. I'm going  
15 to be asking the questions and it's going to be your 09:05AM  
16 responsibility to answer those as best you can.

17 Probably the first rule you need to use is that you  
18 would answer verbally so that Lisa, our court  
19 reporter, can take those responses down and get them  
20 correct. It's all too easy for us in conversation 09:06AM

21 to get used to nodding our head or saying uh-huh or  
22 huh-uh. Those don't come across good, and so that  
23 we have a good Record, I'd ask you to respond yes or  
24 no and refrain from nodding your head when  
25 necessary. Okay? 09:06AM

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1 middle point of the reporting here. So we took what  
2 Tyson had done up to that point and completed with  
3 what we did in order to do the inspection for the  
4 June to July deal or July, June, however.

5 Q There's a mid-year reporting requirement on 10:52AM  
6 this form, isn't there?

7 A Yes.

8 Q I wanted to clarify that. So you are relying  
9 on Mr. Partain with regard to '03 numbers, aren't  
10 you? 10:52AM

11 A Yes, I am.

12 Q Was he operating all of these complexes in  
13 advance of you acquiring them?

14 A Yes, he was. Well, to the best of my  
15 knowledge. That's what I was told. 10:53AM

16 Q All right. When you took over these  
17 complexes, did you in fact sell 100 percent of all  
18 the litter or waste that's produced from the barns  
19 from the sixteen complexes?

20 A Yes. 10:53AM

21 Q Did you ever keep back any poultry waste for  
22 your use for Green Country Farms or any land owned  
23 by you or Green Country Farms?

24 A No, sir.

25 Q So every time you do a clean-out -- how often 10:53AM

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1 do you do a clean-out in your complexes?

2 A It's going to depend.

3 Q I probably need to know all of why then if you  
4 would tell me.

5 A Bird health, amount building up, weather 10:53AM  
6 conditions.

7 Q Generally how often -- I didn't mean to  
8 interrupt you.

9 A You've got to have the right weather  
10 conditions to be able to clean and especially if 10:53AM  
11 you're applicating. When we were selling local,  
12 that would really play a role, but it's kind of a  
13 management decision. Do I think it will improve my  
14 performance by cleaning out? Then, yes.

15 Q Let me ask it this way then: Do you cake-out 10:54AM  
16 after every flock?

17 A 90 percent plus.

18 Q Okay, and on average how often do you do a  
19 full clean-out?

20 A At Green Country Farms we cleaned the farms as 10:54AM  
21 we were retrofitting them in '04 and we are just now  
22 really cleaning out again.

23 Q So you did a clean-out in '04?

24 A Yes.

25 Q And you're now beginning clean-outs again is 10:54AM

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1 what you are saying?

2 A Yes. We've done some partial -- I don't know

3 if you understand a partial clean-out.

4 Q Go ahead and tell me what it is.

5 A It's where you go in and take some litter, and 10:54AM

6 bedding is very expensive, so we save some of our --

7 if we've had good bird health, we save some of our

8 litter, so just take some out in order to get the

9 levels lower.

10 Q You're referring to that as a partial 10:55AM

11 clean-out?

12 A Yes.

13 Q Is that also a term referred to as cake-out?

14 A No. That would be a different one.

15 Q Explain to me the difference between a partial 10:55AM

16 clean-out and your understanding of a cake-out.

17 A Cake-out, there's a machine that goes through

18 the house and has a sifter and will pick up -- if

19 you've had water lines too high pressure or

20 something, it will kind of get wet, damp in that 10:55AM

21 area, which causes ammonia, and this machine will

22 come through and sift that and let the good dry go

23 back down for our bedding and it puts it into a

24 hopper that we then take to our stacking sheds and

25 unload. 10:55AM

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1 Q On a partial clean-out you take it to the  
2 floor?

3 A No.

4 Q Or do you try to save the litter, too?

5 A Partial clean-out we may take it to the floor 10:56AM  
6 in an area of the house and then move litter to  
7 keep -- try to keep it looking like a carpet if you  
8 can.

9 Q So you are moving litter around -- you're  
10 moving good litter into areas where bad litter may 10:56AM  
11 be removed?

12 A I wouldn't say bad litter. It's just built  
13 up.

14 Q Used? Well, do you remove the other litter?  
15 I'm talking about bedding material. Do you remove 10:56AM  
16 part of the bedding material when you do a partial  
17 clean-out?

18 A I would say yes.

19 Q You remove part of the waste and excrement  
20 that's in it on a partial clean-out? 10:56AM

21 A On a partial clean-out, I mean your bedding  
22 and your litter is mixed, and you can really just go  
23 through a certain area with a loader. So you take  
24 some bedding, some litter.

25 Q The litter you are referring to is the poultry 10:56AM

1 waste?

2 A I don't refer to it as poultry waste.

3 Q Well, if you look at the definition of litter,

4 it refers to bedding material, and I'm trying to

5 distinguish that. The bedding material I refer to

10:57AM

6 as litter. Added to that litter is the excrement

7 which comes from the chickens; would you agree?

8 A Say that again.

9 Q When you put new bedding material in there,

10 you buy it fresh and it's not been exposed to any

10:57AM

11 chickens; correct?

12 A That's correct.

13 Q And you put it in there because it absorbs the

14 moisture from the urine and excrement that the birds

15 excrete?

10:57AM

16 A That's correct.

17 Q So at some point in time it gets mixed

18 together into a combination of bedding material and

19 the waste excreted from the birds; correct?

20 A That would be correct.

10:57AM

21 Q And I refer -- and you're referring to that as

22 litter; is that right?

23 A That's correct.

24 Q Both of them combined?

25 A The combination.

10:57AM

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1 Q All right. So you're removing both of them  
2 when you are doing a partial cleaning to some  
3 extent; is that correct?

4 A That's correct.

5 MR. ELROD: I congratulate you on getting 10:58AM  
6 through all of those questions without using the  
7 word poop. It's very well done.

8 MR. GARREN: Thank you, thank you.

9 Q Let's change subjects a little bit. We've  
10 talked about sixteen complexes. Is there another 10:58AM  
11 complex number seventeen that you're aware of?

12 A Do you want the explanation?

13 Q Yes, sir. I've seen a reference and I'm going  
14 to try and pull the document.

15 A It would be -- 10:58AM

16 Q Let me finish my question.

17 A Okay.

18 Q I'll hand you Exhibit No. 4. This I believe,  
19 as I recall, is a three-page document and it  
20 references complex seventeen. 10:58AM

21 A Uh-huh.

22 Q And I will represent to you also that Tyson  
23 entities in their responses to some discovery  
24 requests have identified a complex seventeen but it  
25 also gives the same driving directions that you 10:59AM



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1 Q Do you know whether or not BMP would know?

2 A That's truck driver talk, but there would be  
3 other paperwork supporting this that would probably  
4 say the name of the owner of the sod farm.

5 Q Okay. 11:43AM

6 MR. WILLIAMS: When you get to a convenient  
7 point, another break would probably be helpful.

8 MR. GARREN: I was thinking we might just  
9 push us into lunch.

10 MR. WILLIAMS: If that's what you want to 11:43AM  
11 do.

12 Q Do you know what the eligibility requirements  
13 are for you to participate in the project grant  
14 money?

15 A My understanding is to be in the Illinois 11:44AM  
16 River watershed or I think you might can even be in  
17 Eucha-Spavinaw. I'm not sure. I know if you are in  
18 the Illinois River watershed and ship it to a  
19 watershed that's not nutrient limited.

20 Q Do you know whether or not company-owned farms 11:44AM  
21 can participate?

22 A I do not believe company-owned farms can.

23 Q Do you consider yourself an independent  
24 contractor doing the work for Tyson; is that what --

25 MR. WILLIAMS: Objection to form. 11:44AM

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1 A I'm definitely an independent. I mean I  
2 contract, raise broilers for Tyson.

3 Q Okay. What, if any, encouragement or --  
4 that's fine -- encouragement did you receive from  
5 Tyson to participate in the grant projects for  
6 litter transport?

11:45AM

7 A Encouragement? Define what you mean by  
8 encouragement.

9 Q We'll start back a little bit then. You  
10 indicated your first contact on this was seeing the  
11 ads of BMP and you made a phone call?

11:45AM

12 A Uh-huh.

13 Q Did Tyson or any of its representatives  
14 explain to you that that project is out there, that  
15 grant money is available and you need to get into  
16 it?

11:45AM

17 A Shortly after that I did have a conversation  
18 with some folks from Tyson that said, yes, it's  
19 there and that would be great.

20 Q Who was it you talked to?

11:45AM

21 A It would be -- I know Steve Patrick. Steve  
22 Patrick is who I talked to about that.

23 Q What's his position with Tyson?

24 A I couldn't tell you his title. I know he's in  
25 the environmental end of things.

11:46AM

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1 A That's correct.

2 Q You also purchase some of the supplies that  
3 are used, such as bedding material?

4 A Correct.

5 Q And you have bills that you have to pay like 04:02PM  
6 all other businesses, such as utility bills and gas  
7 bills and things of that nature; is that correct?

8 A That's correct.

9 Q So is it true then in this setting as a  
10 business, like any other setting, that you have an 04:02PM  
11 opportunity to either make money or lose money?

12 A Very much so.

13 MR. GARREN: Objection to the form of the  
14 question as to another setting.

15 Q Are there indeed instances if you looked at 04:02PM  
16 the operations of a particular complex over a period  
17 of time where you might have lost money as opposed  
18 to made money?

19 A Repeat that again.

20 Q Sure. Are there indeed instances since you've 04:03PM  
21 owned and operated this business where if you looked  
22 at a particular complex and you factored in the  
23 expenses associated with that complex where you  
24 might have lost money as opposed to made money?

25 A Yes. 04:03PM

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1 not the entire time they owned it, and that  
2 impressed me.

3 Q Now, for a period of time after you purchased  
4 the farm in -- was it February or March of 2004?

5 A February. 04:06PM

6 Q For a period of time after that, about a year,  
7 the litter that was taken out of those 154 houses,  
8 if I understand correctly, you sold that to litter  
9 haulers or contract haulers; is that correct?

10 A That's correct. 04:06PM

11 Q And I assume you received money for the sale  
12 of that litter?

13 A Yes, I did.

14 Q And I assume you kept that money and used it  
15 in the business as opposed to sending it back to  
16 Tyson Foods; is that right? 04:06PM

17 A That's correct. It helps offset bedding.

18 Q Exactly. Now, beginning in May of 2005 and  
19 continuing on to the present, am I correct in  
20 understanding that all of the litter from the 154  
21 houses at Green Country Farms has gone out of the  
22 watershed? 04:07PM

23 A Best of my knowledge 100 percent has gone out  
24 of the watershed.

25 Q Now, are you required by law to the best of 04:07PM

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1 your knowledge to ship that litter out of the  
2 watershed?

3 A No.

4 Q So is that an instance, sir, where you believe  
5 you've gone above and beyond requirements of  
6 Oklahoma law?

04:07PM

7 MR. GARREN: Objection to the form.

8 A Yes. I believe we've gone above and beyond.

9 Q You were asked some questions. I don't know  
10 if you still have Exhibit No. 9 in front of you,

04:07PM

11 which is the animal waste management plan or at  
12 least the first page of various animal waste  
13 management plans. Do you see in -- the first

14 paragraph of these are all the same. Do you see  
15 down about six lines down the sentence that begins  
16 with the law requires?

04:08PM

17 A Yes.

18 Q Just for the Record that sentence reads, the  
19 law requires that the Natural Resource Conservation  
20 Service recommendations for litter application rates  
21 be followed. You're familiar with the NRCS?

04:08PM

22 A I am.

23 Q And if you go on and read that paragraph, it's  
24 telling you -- this animal waste management plan is  
25 telling you what that law would require in terms of

04:08PM